



Comptroller General  
of the United States

13211

Washington, D.C. 20548

## Decision

**Matter of:** OK's Cascade Company

**File:** B-257547.8

**Date:** May 16, 1995

James F. Nagle, Esq., and John Lukjanowicz, Esq., Oles Morrison & Rinker, for the protester. Allen W. Smith, Department of Agriculture, for the agency. Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest challenging agency's implementation of General Accounting Office recommendation in an earlier protest decision is denied where the agency reasonably implemented that recommendation in a manner consistent with the solicitation evaluation criteria.

### DECISION

OK's Cascade Company protests the implementation of a recommendation of our Office by the Forest Service, Department of Agriculture, under request for proposals (RFP) No. 49-93-12. OK's contends that the implementation is improper because it is inconsistent with the solicitation evaluation criteria, factually unsupported, and was undertaken by an individual who lacked the requisite authority.

We deny the protest.

The solicitation concerns the procurement of mobile food services at multiple locations in 12 western states; award was made to different offerors at the various locations. We sustained a previous protest by OK's because we found that the agency had not conducted a reasonable cost/technical tradeoff. OK's Cascade Co.; et al., B-257547; et al., Oct. 18, 1994, 94-2 CPD ¶ 154, recon. denied, B-257547.5; et al., Mar. 6, 1995, 95-1 CPD ¶ 129. Although OK's offered a \$34.85 total daily per-person price for meals if the firm were awarded a contract for four (or fewer) locations, it offered a lower price, \$31.80, if it were awarded a contract for five locations. The agency found that OK's was in line for award at three locations; the dispute in the protest

concerned two additional locations, Bend and Reno. If OK's were awarded a contract for both of those locations, its lower (\$31.80) price would apply to all five sites.

As explained in our decision, the record indicates that the Forest Service considered award of Bend and Reno separately and did not conduct a cost/technical tradeoff that took into account the fact that, if both locations were awarded to OK's, the government would obtain a lower price than the extant awardee offered at Reno and a higher-rated technical proposal, albeit at a higher price, at Bend. We recommended that the agency conduct a cost/technical tradeoff that took into account the possibility of awarding both locations to OK's. We pointed out that, so long as the cost/technical tradeoff analysis was reasonable and consistent with the RFP evaluation criteria, the agency would be free to confirm the awards made or to conclude that one or both of the contested awards should have been made to another offeror.

In response to our decision, the agency conducted a new cost/technical tradeoff and concluded that the original awards should not be changed--that is, OK's would not be in line for award, notwithstanding the availability of its discounted price at both Bend and Reno. In its new analysis, the agency added the daily prices for the two locations to reach a combined daily price. Thus, the price offered by OK's was treated as \$63.60 for the two locations (the discount price of \$31.80 multiplied by two); the original award, which entailed awards to two other firms, was calculated to have a two-location price of \$60.80 (\$28.35 for Bend and \$32.45 for Reno). Since the OK's price was \$2.80 higher than the alternative, the cost/technical tradeoff involved deciding whether OK's offered technical superiority would merit paying that additional amount.

After review of the technical ratings, the contracting officer determined that the technical advantage offered by the OK's proposal was slight and did not justify paying the \$2.80 per-person daily price premium. The contracting officer noted in this regard that OK's and the awardee were assigned similar technical ratings for the Reno location (although the OK's rating was higher), and that the higher rating for OK's at the Bend location arose in the two least important technical subfactors.

OK's alleges several flaws in the new cost/technical tradeoff, which it views as an attempt to "nullify any meaningful implementation" of our Office's decision. First, OK's argues that the tradeoff was made only by the contracting officer, rather than by the source selection official (SSO). Second, OK's argues that the contracting officer, in finding that the technical scores were "almost the same," understated the protester's evaluated technical

superiority over the awardees.<sup>1</sup> Third, the protester contends that the cost/technical tradeoff was irrational and inconsistent with the RFP evaluation criteria.

In its report on this protest, the agency furnished documentary evidence which establishes that, while the narrative setting out the cost/technical tradeoff analysis was written by the contracting officer, the SSO subsequently approved it. In its comments on the agency report, the protester responds that there is no evidence that the members of the agency's board of contract awards were involved in the award recommendation submitted to the SSO for approval, as allegedly required by the source selection plan. Since the recommended decision was, in fact, adopted by the SSO and we find that decision reasonable and consistent with the solicitation, any lack of involvement by intermediary reviewers would be, at most, a procedural infirmity that could not have prejudiced OK's. Because prejudice is an essential element of a viable protest, Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379, the protester's challenge to the procedural handling of the cost/technical tradeoff analysis, even if factually well founded, would not warrant sustaining the protest.

With respect to the substance of the cost/technical tradeoff analysis, the record indicates that the agency has fully complied with our recommendation. The protester focuses on the fact that the agency refers to the proposals as "almost the same" technically. Notwithstanding that language, however, the agency report presents an analysis of the value to the agency of those areas in which the protester's proposal was found superior, and offers a reasoned justification for preferring the lower-cost awards to the


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<sup>1</sup>In its May 8, 1995, comments on the agency report, the protester offers as support for this argument allegations that one awardee's equipment should have been found technically unacceptable and that this awardee's experience was not properly evaluated. In its initial protest, which was filed in June 1994, the protester had raised challenges to the technical evaluation of proposals, but abandoned those particular issues by not responding to the August 1994 agency report on those matters. OK's Cascade Co., et al., B-257547; et al., Oct. 18, 1994, 94-2 CPD ¶ 154. That agency report disclosed to the protester's counsel, under a protective order issued by our Office, the full evaluation record for the awardees' proposals. Because protest issues (other than those related to alleged specification defects) must be raised within 10 days of when they are known, or should have been known, 4 C.F.R. § 21.2(a)(2) (1995), the technical evaluation challenges raised for the first time in the protester's May 1995 comments are untimely.

other offerors to awarding both locations to OK's. For example, the agency considered the fact that OK's was evaluated as having organizational capacity and credit superior to that of the awardee at the Bend location. The agency determined that this did not reflect a significant difference in value to the agency offered by the two technical proposals. For that reason, the agency concluded that the protester's superiority in that area did not justify paying the significant price premium associated with its proposal.

The agency has provided similarly detailed, reasoned explanations for the Reno location as well as for the two locations viewed together. As we noted in our decision, so long as the cost/technical tradeoff analysis was reasonable and consistent with the RFP evaluation criteria, the agency was free to confirm the awards made. This is consistent with the rule that the extent to which agencies may sacrifice cost for technical superiority, or vice versa, is governed only by the test of rationality and consistency with the established evaluation criteria. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Here, the Forest Service has confirmed the awards on the basis of cost/technical tradeoff analysis that is reasonable and consistent with the RFP evaluation criteria.

The protest is denied.

  
for Robert P. Murphy  
General Counsel